

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Petition for Declaratory Ruling and/or Waiver)	
Regarding Cost Recovery of Wireless Local)	
Number Portability from End-Users)	
_____)	

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to Federal Communications Commission (FCC / Commission) Rules 1.415 and 1.419,² hereby provide its comments to the BellSouth Corporation (BellSouth) Petition for Declaratory Ruling and/or Waiver Regarding Cost Recovery of Wireless Local Number Portability from End-Users (Petition).³ Pursuant to section 1.2 of the FCC's rules,⁴ the FCC now seeks comment on BellSouth's Petition.

In its Petition, BellSouth asks that the FCC rule "that wireline carriers are entitled to a reasonable opportunity to recover the costs to implement wireless local number portability (WLNP) in accordance with section 251(e)(2) of the Telecommunications Act of 1996, the Commission's cost recovery order, and its implementing rules."⁵ In addition, BellSouth seeks a waiver of section 52.33 of the Commission's rules "to allow BellSouth to modify its current end-

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² 47 C.F.R. §§ 1.415 and 1.419.

³ Telephone Number Portability, CC Docket No. 95-116, Petition for Declaratory Ruling and/or Waiver of BellSouth Corporation (BellSouth), filed November 14, 2003 (Petition).

⁴ 47 C.F.R. § 1.2.

user local number portability charge by extending the recovery period beyond the maximum five years and/or modifying the current rate.”⁶ We agree, and support the relief that BellSouth requests herein.

BACKGROUND

In the *Telephone Number Portability*, First Report and Order,⁷ the FCC promulgated rules and deployment schedules for number portability. The FCC ordered LECs to begin the phased development of a long term service provider local number portability (LNP) method in the 100 largest Metropolitan Statistical Areas (MSAs). In addition, the FCC found that under section 251(b)(2) of the Communications Act of 1934, as amended (the Act),⁸ that the public interest required Commercial Mobile Radio Services (CMRS) carriers to provide the same LNP obligations as LECs, even though CMRS carriers were not expressly mentioned in the statute. The FCC relied on its “independent authority” found in sections 1, 2, 4(i) and 332 of the Act, to require wireless number portability.⁹ The FCC mandated that wireless carriers provide number portability by November 24, 2003.

⁵ See Public Notice, DA 03-3779, BellSouth Petition (Nov. 24, 2003).

⁶ *Id.*

⁷ *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996)(First Report and Order).

⁸ See 47 U.S.C. § 251(b) (stating [T]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission).

⁹ First Report and Order at ¶¶ 152-53. See also 47 U.S.C. §§ 1, 2, 4(i) and 332.

DISCUSSION

I. ILECs Recover LNP Costs Via End-User Charges

USTA agrees with BellSouth that the FCC should explicitly state that incumbent local exchange carriers (ILECs) should be allowed to recover the costs associated with implementing WLNP through end-user charges. Under section 251(e)(2) of the Act, “[t]he costs of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”¹⁰ The FCC has developed a number portability cost recovery mechanism that satisfies the statute’s competitive neutrality requirement.

In the Third Report and Order, the Commission found that the ILEC costs associated with number portability implementation must be borne in “a competitively neutral basis and include the costs that LECs incur to meet the obligations imposed by section 251(b)(2), as well as the costs other telecommunications carriers—such as interexchange carriers (IXCs) and commercial mobile radio service (CMRS) providers—incur for the industry-wide solution to providing local number portability.”¹¹ In 1999, the FCC “allowed LECs to recover their costs directly related to providing number portability through a federally tariffed, monthly number-portability charge assessed on end users for a maximum of five years.”¹² The FCC found that “requiring incumbent LECs to bear their own carrier-specific costs directly related to providing number portability and allowing them to recover those costs from their own customers, while leaving other carriers unregulated meets our competitive neutrality standard”¹³ ILECs must thereby recover the costs associated with LNP implementation through end-user charges. Hence, the

¹⁰ 47 U.S.C. § 251(e)(2).

¹¹ *Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11706 ¶ 8 (1998)(Third Report and Order).

¹² 47 C.F.R. §52.33(a)(1).

¹³ Third Report and Order, at 11774, ¶ 136.

FCC should declare that ILEC WLNP implementation costs should be recouped via end-user charges, which is consistent with the Act, the FCC's rules, and prior decisions.

II. The FCC's Rules Should Allow ILECs to Recover WLNP Costs

The relief sought by BellSouth allows ILECs "to recover the carrier-specific costs incurred directly to implement WLNP by modifying the current end-user LNP charge and/or extending the recovery period."¹⁴ The Commission's rules allow for a maximum limit of five years for an ILEC to impose an end-user charge for LNP.¹⁵ In addition, the FCC stated that "After a carrier establishes its levelized end-user charge in the tariff review process we do not anticipate that it may raise the charge during the five-year period unless it can show that the end-user charge was not reasonable based on the information available at the time it was initially set."¹⁶ In order for ILECs to recover WLNP costs, ILECs must show that the costs associated with WLNP were not available at the time the end-user charge was initially set.

The current end-user charge assessed by ILECs does not take into account WLNP implementation costs because ILECs were unable to recoup these costs until November 24, 2003, when the FCC mandated wireless LNP. Before November 24, 2003, ILEC costs associated with WLNP implementation would have been unknown and speculative in nature. Moreover, because of the speculative nature of these costs, the FCC would have rejected them. In sum, ILEC WLNP implementation costs were not ascertainable until November 24, 2003, and as such, the FCC should declare that WLNP implementation costs should be recovered consistent with the Commission's current rules.

¹⁴ BellSouth Petition at 8.

¹⁵ 47 C.F.R. § 52.33(a)(1).

¹⁶ Third Report and Order, 13 FCC Rcd at 11777, ¶ 144.

Further, BellSouth's Petition demonstrates the type of ILEC network modifications that must occur in deploying WLNP.¹⁷ The cost of ILEC network modifications in design, installation, testing and deployment to accommodate WLNP implementation are substantial.¹⁸ BellSouth has estimated that the eligible costs associated with WLNP will be approximately \$38 million.¹⁹ In order to recoup these costs, BellSouth has devised four potential scenarios in which the FCC would allow recovery of WLNP implementation costs.²⁰ Whatever cost recovery scenario that the FCC may deem appropriate must consider that individual carrier specific WLNP implementation costs may vary based on the modifications required of the network.

Finally, USTA supports BellSouth's request for waiver of section 52.33 of the FCC's rules. We believe that BellSouth has satisfied the "good cause" standard for grant of a waiver by demonstrating that special circumstances do indeed exist. However, USTA would encourage the FCC to grant BellSouth's Petition and extend the recovery period beyond the maximum five years and/or modify the current rate, so that all ILECs may be allowed to recoup the costs associated with WLNP implementation.

¹⁷ BellSouth Petition at 11-18.

¹⁸ *Id.* at 18.

¹⁹ BellSouth Petition at 11.

²⁰ *See Id.* (stating that in its first proposal, BellSouth seeks to raise the existing monthly rate upon end-users for the remainder of the five-year recovery period). Under its second proposal, BellSouth would allow for the expiration of the current LNP charge and seek a new rate for three months to recover the costs associated with WLNP. Alternatively, BellSouth's third proposal would allow for the expiration of the current LNP charge and allow BellSouth to recover its WLNP over a six month timeframe. Finally, BellSouth proposes a one time charge to the end-user for its WLNP costs.

CONCLUSION

For the reasons set forth above, USTA contends that the recovery of ILEC WLNP implementation costs is warranted and is consistent with the Act, the Commission's rules, and its prior decisions. USTA respectfully requests that the Commission grant BellSouth's Petition and extend the recovery period beyond the maximum five years and/or modify the current rate to account for implementation costs of WLNP for the entire ILEC industry. We believe that the public interest requires no less.

Respectfully submitted,



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